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Landlord and Tenant

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of jurisdiction over the subject matter, notwithstanding the fact that the National Labor Relations Board had declined jurisdiction. This decision was reversed by the Ohio Supreme Court.⁴ For a discussion of the sequel to this decision, see the 1959 survey.⁵

EDWIN R. TEPLÉ

LANDLORD AND TENANT

Plaintiff, in *Artman v. Cities Service Oil Company*,¹ brought an action to recover for personal injuries received when an explosion and fire occurred in a gasoline station. Defendant was in the position of a lessor of the station to a third party who operated it. Settlement had previously been effected between the plaintiff and the third party lessee-operator.

The court held that the reservation of the right to inspect the premises, make major repairs, and have its products advertised and sold therein, did not constitute the type of control that would make defendant liable for the injuries. The power and the right to admit and exclude persons from the premises is a necessary element of this control, and in this instance that power was exclusively in the third party lessee-operator. This is a re-affirmation of a rule set forth in an older Ohio case.²

The court considered another issue worthy of note. A gas water heater had been constructed and was operating in the station, in violation of a city ordinance. It had been determined that the open flame on the water heater caused the explosion. This heater was installed and operational, in violation of the ordinance, when the lessee went into possession. Nevertheless, the court, although appearing reluctant to do so, held that this pre-existing violation by defendant would not make it responsible for the explosion and fire.

In *Walnut Hills Investment Corporation v. Goodman*,³ the court was concerned with the creation and termination of a tenancy at will. Plaintiff lessor and defendant lessee negotiated a lease, which was never executed, for the rental of a store, to include the street floor area and the basement underneath. Both parties understood that a building permit would be necessary before defendant could remodel the basement room for use as a retail store. The permit was applied for and refused. In the interim, defendant occupied the basement and continued to do so for several years. After it was clear that no permit could be obtained, the plaintiff, by letter, demanded rent for the basement, both for the period preceding the demand, and for the future.

4. 168 Ohio St. 8, 151 N.E.2d 12 (1958), discussed in Teple, *Labor Law, Survey of Ohio Law* — 1958, 10 WEST. RES. L. REV. 421, 424 (1959).

5. Teple, *Labor Law, Survey of Ohio Law* — 1959, 11 WEST. RES. L. REV. 396, 402 (1960).